

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE URIOSTIGUE-BAENA,

Defendant.

Case No. 2:04-CR-0433-KJD-RJJ

ORDER

Presently before the Court is Defendant's Motion for Sentence Adjustment (#65). The Government filed a response in opposition (#66). Defendant seeks to have his sentence adjusted asserting that his status as a deportable alien makes his imprisonment more severe because he is ineligible to be released to a halfway house or residential drug abuse program.

The Court must deny the motion. First, Defendant was sentenced to a seventy (70) month term of incarceration in July 2005. Therefore, his motion is likely moot as he has already been released. Second, the Court is without authority to modify his term of imprisonment. See United States v. Smart, 129 F.3d 539, 540-41 (10th Cir. 1997); 18 U.S.C. § 3582(c). Third, the Ninth Circuit Court of Appeals has rejected this Equal Protection argument. See de Jesus Melendez v. Gonzalez, 503 F.3d 1019 (9th Cir. 2007). Finally, if brought under 28 U.S.C. § 2255, Defendant's claim is time-barred.

1 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion for Sentence Adjustment
2 (#65) is **DENIED**.

3 DATED this 4th day of April 2013.

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7 Kent J. Dawson
8 United States District Judge
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